DOCUMENT RESUME

ED 457 647 EC 308 659

AUTHOR Sewell, Angela Maynard; Balkman, Kathy
TITLE DNR Orders and School Responsibility.
PUB DATE 2001-00-00
NOTE 14p.
PUB TYPE Information Analyses (070)
EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Compliance (Legal); *Court Litigation; Disabilities; Elementary Secondary Education; Federal Legislation; *Legal Responsibility; Policy Formation; *School Responsibility; *Special Health Problems; *State Regulation
IDENTIFIERS *Do Not Resuscitate Orders

ABSTRACT

This paper discusses the legal and ethical questions surrounding "Do Not Resuscitate" (DNR) orders in the school environment. It begins by reviewing federal and state case law that addresses the appropriateness of medical services and the responsibility of schools in terms of provision of medical services. The review finds that when medical-like services are provided, even in compliance with the pertinent standards, the person providing the services has potential liability should there be resultant injury to the student. Thus, if a DNR order is on file for a child with medical problems, there may be a liability issue for school personnel who do not comply with the order. The paper then considers court cases that have addressed the "right to die" and cases that have upheld the requirement for schools to comply with DNR orders. Key questions that arise from court rulings and the lack of clarity in regard to the parental right to promulgate a DNR order for a child are discussed, and state legislation addressing DNR orders is explored. The paper concludes that schools should develop policy and procedures to address the issue of DNR orders should an emergency arise in which DNR is of concern. (CR)

Presenters:
Angela Maynard Sewall, Ed.D.
Professor
Department of Educational Leadership
University of Arkansas at Little Rock
2801 South University Avenue
Little Rock, Arkansas 72204
(501) 569-3267/Fax (501) 569-8694

Kathy Balkman
Instructor
Henderson State University
1100 Henderson Avenue
Arkadelphia, AR 71999

DNR Orders and School Responsibility

Educational development and professional training for teachers and administrators alike is of prime concern in these times of educational accountability and change. No where is this more true than in the case of a student who comes to school with a DNR order. The legal and ethical ramifications of this situation and the personal concern for educators and parents led to this research and presentation..

As medical issues become more evident in public schools as a result of concerns related to inclusion, many questions are emerging relative to expectations for teachers of students with medical issues. As more complex health care issues are emerging in general education classrooms and in the school itself. Among those issues are gaps in the preparation of veteran classroom and special education teachers to meet the needs of students who are medically fragile.

The law as defined in cases such as *Sacramento City Unified School District v. Holland*, 14 F. 3d. 1398 (9th Cir. 1994), and *Oberti v. Board of Education of Clementon School District* (1993, 19 IDELR 908, 3rd Circuit) makes it clear that if a student is medically fragile and if that student could benefit from placement in a general education classroom from both academic and social perspectives and if the effect on non-disabled students and the teacher is not deleterious; then placement of such a student may be

appropriate in general education classes. However, although IDEA and Section 504 of the Rehabilitation Act of 1973 establish some guidelines for school and medical-like services for students with disabilities, neither state law nor precedent seems to define "care" for teachers and school nurses who work with these children.

Some cases address the appropriateness of medical services and delimit the responsibility of schools in terms of provision of medical services and the liability for payment of associated costs. Among these cases are: *Irving Independent School District v. Tatro*, 468 U.S. 883 (1984), *Katherine D. v. Department of Education of Hawaii*, 727, F2d. 809 (9th Cir. 1983), *Detsel v Board of Education of Auburn Enlarged City School District,* 820 F2d 587 (2d Cir., 1986), and *Neely v. Rutherford Co. Schools*, 68 F3d 965 (6th Cir. 1995). The concept, "medical –like" services, which arises in the cases of *Katherine D., Tatro, and Detsel,* implies " if a student has established the need for the services to 1) overcome a functional limitation because of the disability, that will 2) enable him to benefit from special education, it is the state educational agency's (SEA) responsibly to ensure that the child receives the related services." (Arkansas State Department of Education Resource Guide p. 5).

When medical-like services are provided, even in compliance with the pertinent standards, the person providing the services, has potential liability should there be resultant injury to the student or to other students. Even though personnel such as nurses and generally teachers must have training to perform required procedures like catherization, most school district personnel are neither qualified nor equipped to comply fully with a physician's orders. Still, there is a duty to assist students in line within established legal standards. With the inclusion of students with more severe medical conditions in classrooms, school staff may be called upon to comply with physicians' requests. It is highly possible that these requests may include honoring a do not resuscitate order.

Liability

Liability must be considered when the placement of such children in a general education classroom raises the level implied by the duty of care and extends it beyond day to day maintenance of the learning environment and beyond the provision of special services. If a DNR (do not resuscitate) order is on file for a child with medical problems, there may be a liability issue for a teacher, principal or other employee who, in an emergency situation, does not comply with the order Precedent may be predicated on such cases as *ABC School et al v. Mr. and Mrs. M. (1997 Mass. Super. Lexis 43), Brophy v. New England Sinai Hospital, Inc.* (398 Mass. 417, 1986), and *Superintendent of Belchertown State School v. Joseph Saikewicz* (373 Mass. 728, 1977). The existence

of a DNR order raises multiple issues that implicate issues of competency, confidentiality, and liability. One may conclude that teachers and schools have a duty of care for their students and that reasonable teachers provide that level of care. The question may be asked, "does that level of care include the administration of a DNR order?" Additional issues that arise for consideration, beyond the question of standard of care, include parental versus school rights, the right to die, student rights in the DNR decision, and impact on the educational environment.

Several cases in the past ten years have addressed the question of "right to die" and whether an individual can make that decision and whether others can make that decision for an individual who is no longer competent. In the case, *Cruzan v. Director, Missouri Department of Health,* 497 U.S. 261 (1990), the question of the right to refuse medical treatment raised issues applicable to the question of liberty with the finding affirming the state position that although Nancy Cruzan was rendered incompetent by her accident " her parents lack(ed) the authority to effectuate such a request" to withdraw life support and to allow her to die. While the facts may differ from those surrounding a student who has a DNR order in a public school, the question of how that order should be applied and by whom is as pertinent in the school as it is in a health care facility. In fact, in the case *In Re: K.I.*, 735 A2d 448 (1999, D.C. App), the District of Columbia Appeals Court ruled that the "best interest of the child standard applied in cases involving minors (who) lacked and will forever lack the ability to express preferences regarding the course of their treatment."

The Cruzan case differs from that of Karen Quinlan, (*In Re Quinlan* 70 N.J.10 (1976). In the Quinlan case, the state court concluded "the only practical way to present the loss of Karen's Privacy rights (in regard to the decision as to whether or not to remove her from life support) was to allow her guardian and family to decide." (at 42). This decision, as compared to that in the Quinlan case, points out the lack of consistency in legal standards related to the right to die. The standard as to who can decide to remove life support and who should and can decide on the implementation or non-implementation of a DNR order, may not be clear. This does vary from state to state. A child who is a minor is generally considered not competent to make such decisions for himself or herself but this is not true in every state. While a medically fragile minor child in school for whom there is a DNR order maybe alert and aware, should some event of medical complication arise, an immediate decision must be made by school staff or school health providers as to what actions should be taken. The child, as a minor cannot be expected to make the decision. If

the parent or guardian has expressed a desire for a DNR order and an attending physician signed the order, the school is placed in a difficult position.

Absent state statutes or even an Attorney General's opinion providing direction, the immediate impulse of school personnel may be to attempt resuscitation inspite of the order. On the other hand a choice may be made to honor the order, thereby allowing the child to die even though this may be construed to be an illegal act. In either situation, there may be liability for the individual and for the school insprite of the fact that actions taken may the have been in good faith.

In the case *ABC School v. Mr. and Mrs. M* 1997 Mass. Supr. Lexis 43 (97-518) the court issued an order for the school to honor the terms of a DNR order. The school sought to refuse to honor the order. The school had a policy that required teachers to "use whatever mans to preserve and protect a child's life in the event of a crisis." (p. 4) The parents argued that the right to refuse medical treatment for their minor child is constitutionally protected. It is fair to note that the DNR order did not preclude some intervention (treatment) but due to the child's fragile medical condition sought to prevent the administration of other potentially life saving interventions such as CPR. The school was ordered to comply with the DNR order and was not shielded from the possibility of liability in a suit for damages as a result of providing such emergency first aid. In fact, the court rejected the school's request that any action "taken by school personnel which violated the DNR orders would be in good faith ". In a similar case in Lewiston, Maine, the teachers union actually requested that the school be released from the obligation to honor a DNR order.

Other Cases

Consideration of these cases and the *Department of Education, State of Hawaii v. Katherine D.* 727 F.2d 809 (1983) leads to an understanding of the discomfort that school staff may have with some of the emergency health services that may be recommended for children with serious medical problems. *Hymer v. Harnett County Board of Education*, 664 F.2d 410 (4th Cir. 1981) is the case of a child whose medical condition required maintenance of a tracheotomy tube and suctioning of mucus as "related services". It is another example of the requirement that health care should be provided in order to allow students to enjoy a free and appropriate public education. Since a condition that may require suctioning of mucus is often a symptom of a life threatening condition, the decision in the Hymer case relates to the DNR issue.

"In the State of Maine alone, at least three school districts have received requests that doctor-issued do not resuscitate orders be recognized by schools in the case of a

medical emergency at school." (Herlan, 1994, p. 4) The Maryland Office of the Attorney General issued an opinion that "school officials must accept the DNR order from parents of a terminally ill child and refrain from medical interventions that are inconsistent with it." (Opinion No.94-028m 1994). Refusal to comply with the order may expose the district and individuals involved in the decision to litigation or to IDEA or 504 hearings absent a state law that precludes adherence to such an order and/or a law that provides immunity to the district personnel. School nurses are placed in a particularly difficult situation since the usual state definition of "health care provider" as reflected in the regulations of many states would include school nurses.

Key Questions

The issue of the right to die is more difficult to address in the case of a child entrusted to teachers and a school for educational purposes than the case of an adult who is competent and makes a decision to exercise his liberty interest by signing a DNR order. The variability of court decisions tends to muddy the legal requirements for intervention in a medical crisis for school personnel and in school policy. Certainly the school is not a health care facility. The school nurse is not a health care provider in the same sense as a charge nurse working in a hospital under the direct orders of a physician. Most school nurses have standing orders but these do not generally relate to DNR. Still the school nurse may be construed as meeting the definition of "health care provider" in the regulations of several states.

The teacher has a responsibility to safeguard students but the teacher is not a health care provider, regardless of whether or not the teacher is certified in CPR or has training in first aid. The question remains, what a teacher or other school personnel should do when faced with a DNR order in an emergency situation. In the Maine case, the teacher union's request to the Court that the DNR order be set aside and that teachers not be asked was denied. (Herlan, p. 4) In an article in The Special Educator, "Common Pitfalls When Responding to Drs", the following caveat is given. "A district that responds to DNR orders on other than the legal level hasn't checked state law or explored whether the order is in the best interest of the child." The author goes on to say that " . . . the decision has already been made by way of the order . . . and it is not for a doctor or school personnel to make medical interventions inconsistent with the order". (Beekman, 1995).

There is a tension between the definition of medical services provided in the school setting such that students with disability can be "included" and the denial of emergency care in the presence of a DNR order. Cases such as *Macomb County Intermediate School*

District v. Joshua 715 F. Supp. 824 (E.D. Mich. 1989) contrast with other decisions, for example, *Bevin v. Granite School District v. Shannon M.* 787 F. Supp. 1020 (D. Utah, C.D., 1992) and preclude clear directions by which schools may operate. In *Joshua,* the court ruled that the requested medically related services and constant monitoring must be provided. In *Shannon M.,* the court felt that the level of nursing (constant monitoring) required was not a supportive service. In another case, *Bevin v. Wright* 666 F. Supp. 71 (W.D. Pa. 1987), the court ruled that the school district did not have to provide the extensive nursing services needed by a child with multiple handicaps under the Education for All Handicapped Children Act, (20 U.S. C. § 1491).

Although these cases do not relate to compliance with a DNR order, they do clearly demonstrate the lack of consistency in court decisions concerning the medical needs of students who are identified within the framework of IDEA or Section 504. The ruling in *Detsel v. Sullivan* (895 F2d 58 (1990) U.S. App. 2nd Cir.,), was that medically fragile children may properly be placed in regular schools and constant nursing may be paid by Medicare.

Several questions arise from court rulings and as a result of the lack of clarity in regard to the parental right to promulgate a DNR order for a child, whether that child is a minor or an adult who is incompetent as in the cases of Quinlan and Cruzan. Among these questions are:

- How is "in loco parentis" defined when there is a DNR order? Does the presence of the order change the traditional understanding of this definition ?
- How is the interest of the state in preserving life impacted by the existence of a DNR order for a student?
- For purposes of compliance with a DNR order, is a school nurse considered a health care provider under the law ?
- Does the lack of to assistance for a student with disabilities discriminate against that student, if there is a DNR order, since the school would provide such interventions for a non-disabled student?

(Herlan, 1994).

- Is the school nurse considered to be a "health care provider" under state statutes such the "medical services" can be provided or does the nurse provide only "related services"?
- What is the liability of a principal who shares information concerning a DNR order with teachers who are in contact with the student but not with other staff if a life threatening emergency occurs? Is a civil rights tort committed? Is a tort of negligence

committed? Is failure to share this information to be construed as falling below an acceptable standard? What is the injury caused the student and/or the parents who promulgated the DNR order?

Beekman, in a June, 1995 article in The Special Educator, makes the point that about 40 states allow a third party to make decisions regarding a DNR order (Vol. 10, No. 22). He suggest that it is important for school personnel to obtain a copy of the order and to consult with an attorney in order to determine what actions to take in an emergency.

In a March, 1998 article, (Vol. 15, No. 5 Medical Malpractice and Strategy of the New York Law publications), Linda Crawford noted that in the *Belcher v. Charleston Area Medical Center* case (422 S.E. 2nd 827 [W. Va., 1992]), the court ruled that a 17 year old with muscular dystrophy "should have been required to give his consent to the DNR order. Complying with the wishes of the parents was not enough to satisfy the court that the DNR order should have been implemented by care givers." (This case places the decision in the hands of a minor if we interpret the age of majority to be 18.)

State Standards, DNR Orders and School

Case law is varies concerning the role of schools in the implementation of DNR orders. Court rulings are few in number. The same paucity of standards exists relative to state statutes that define the school role and responsibility in regard to DNR. A few state Attorneys General have presented opinions relative to DNR orders and school issues. However, the lack of address to issues concerning DNR orders and school liability is indicative of the emerging nature of the potential legal questions in relation to DNR.

Some states, for example Oklahoma, assertively answer the question of potential liability (63 Ok. St. § 3131.8 [1999]). The Oklahoma statutory positions it that some protection is provided to school nurses who, acting in their capacity as health care provider either fail to honor a DNR order or honor is within the legal definition of "good faith". The question of privacy and need to know within a school is not answered by the statute, however. West Virginia statutes accord a similar protection (W. Va. Code §16-30C-9, 2000) that of Oklahoma and the statutes extend protection to those who witness a cardiac or respiratory arrest whether or not they act. Utah statutes accord similar protection, but only if the person for whom a DNR order exists is 18 years of age or older and is in a terminal condition. The statutes are silent on the question of school age children. (Utah Code Ann. § 75-2-1105.5, 2000).

In 1996, legislation was enacted in Tennessee concerning patient privacy and DNR orders, (Tennessee Health Law Update, July 1996, Vol. 2, Section 10). Section 5 of the act provides for private civil action for damages for invasion of privacy. The act adds

protection for nurses making them immune for suit if they comply with a DNR order in accordance with the law.

Massachusetts is one of the few states in which judicial opinion has been rendered relative to a DNR order and schools. In *Belchertown v. Sackwicz* (373 Mass. 728(1977), the Supreme Court of Massachusetts held that "a decision as to whether to withhold medical treatment for a mentally incompetent person should conform as closely as possible to the decisions which would be made by the incompetent person if that person were competent. (@ 746-747).

Some other states have addressed DNR orders generally in such a manner that implications may be drawn for schools. A Delaware statute (Title 16, Part 2, Chapter 25) holds that "health care decisions shall mean a decision made by an individual or the individuals, agent, surrogate or guardian regarding the individual's health care including: do not resuscitate orders. The implication is that schools should comply with DNR orders. The Arizona (A.R.S. § 36-3251 [2000]). The code addresses DNR orders and defines emergency medical system personnel so that school nurses could not be considered to be included. School nurses would normally be required to resuscitate a student with a DNR order and immunity is provided for those acting in "good faith and pursuant to reasonable medical standards . . .(who) participate in withholding life sustaining treatment (c, 22-8A-7). The statute is framed for patients in a health care facility not in a school.

The California code (Cal. Prob. Code 4763 [2000]) defines a DNR order as "a written document signed by (1) the individual, or a legally recognized surrogate health care decision maker, and (2) a physician." Under the law, a specific definition is provided for a "health care provider" however, the statute is silent as to whether nor not the definition includes nurses not engaged as emergency response employees. Most school nurses are emergency response employees and would not be expected to comply with a DNR order. A health care provider who honors a request to forgo resuscitative measures shall not be subject to criminal prosecution, civil liability, discipline for unprofessional conduct, administrative sanction or any other sanction as a result of his or her reliance upon the request, if the health care provider (1) believes in good faith that the action or decision is consistent with this section (Chapter 2, Article 3), and (2) has no knowledge that the action or decision would be inconsistent with a health care decision that the individual signing the request would have made on his or her own behalf under the circumstances."

Hawaii statutes (HRS §3273-2 [2000]) do not include school nurses in the cadre of heath care professionals who could honor a DNR order. Under these laws, "health-care institutions" are defined as institutions "permitted by law to provide health care in the ordinary course of business. Connecticut statutes, (Conn. Gen. Stat. § 192-580d [1999]),

require the Department of Public Health to adopt regulations in regard to DNR orders. The Connecticut Attorney General opinion issued an opinion in 1984 (84 Op. Atty. Gen. Conn. 444) that the "rights of the individual must be weighed against state interests in the preservation of human life (p. 1)" School personnel are not equipped to make such a decision. Consequently, the decision to honor a DNR order is beyond the purview of a school and must be settled in other venues.

It is clearly noted in Virginia law (VA. Code Ann §54.1-2987.1 [2000]) that if the person who has an emergency is a minor, the authority to follow a DNR order is revoked if the person qualified to decide for the minor does not consent. The school role " in loco parentis" is impacted as the statute implies that contact must be made in the event of an emergency to determine whether or not consent previously given is still applicable. In the interim, while contact is being made, one might reasonably suppose that resuscitation would have to be given. This may make the DNR moot. However, the law states that a "health care provider includes but is not limited to qualified emergency medical service personnel."

Georgia statutes state that (O.O.G.A. 31-39-4 [2000]) "any parent may consent orally or in writing to an order not to resuscitate for his or her minor child when such child is a candidate for non-resuscitation. If in the opinion of the attending physician, the minor is of sufficient maturity to understand the nature and effect of an order not to resuscitate, then no such order shall be valid with out the assent of the minor." This increases the complexity of decision-making for school personnel in regard to a DNR order and may necessitate substantial interactions with both the parent and the attending physician (and possibly with the student) prior to any action being taken.

While the Nebraska statutes are (R.R.S. Neb § 43-279 [2000]) silent regarding DNR orders there is an Attorney General's opinion (1997 NEB Leg. Lexis 9, Opinion No. 97-08) on the subject. That opinion states that DNR decisions are to be made on case by case basis for minors in the care of the state Division of Children and Family Services only. There is no statement made that would extend the decision making to schools. Another Attorney General's opinion was issued in Michigan (# 7009, March 2, 1999) regarding a child under 18 years of age that noted that there is no system for DNR outside of a health care facility. A Maryland (Md. Health General Code Ann. § 5-607 [1999]) code specifically addresses DNR and the language of the law is reiterated in an Attorney General's opinion. That opinion states that "if an attending physician of a terminally ill child has entered a do not resuscitate order on the authorization of the child's parents, school officials must accept the order and refrain from medical interventions that are not consistent with it." (79) P Atty. Gen, May 13, 1994).

Law in Louisiana (La. R.S. 40: 1299.58.2 [2000]) requires the wearing of an identification bracelet indicating the presence of a DNR order. Certified first responders in an emergency are not liable for withholding life-sustaining procedures in the presence of such a bracelet and will not be liable for providing life-sustaining interventions if no bracelet is worn even if such an order exists. The Attorney General of Louisiana, issued an opinion on April 17, 2000 (Opinion No. 00-73) responding to a request for a policy regarding DNR. The Louisiana Board of Elementary and Secondary Education and each LEA made the request. The purpose of the request was to obtain clarity whether school personnel should honor or refuse to honor a DNR order. The Attorney General referenced two cases. The first was *Lewiston, Maine Public Schools* (2ECLRR 121, OCR, 1994). In that case, OCR ruled that a "policy which did not distinguish between students with and without disabilities (in regard to treatment) but did allow for the development of individually designed medical resuscitation plans by multi-disciplinary school based teams" did not conflict with Section 504 or with ADA (p. 3). The second case was the *ABC case*. The Louisiana Attorney General cited the Maryland Attorney General's opinion and concluded that state law and policy regarding DNR did not apply to children who are not terminally ill. The Attorney General stated "Louisiana law does not address the responsibility of this type of declaration being complied with by school personnel." He further noted that the risk to a child from treatment must out weigh the benefits for any consideration to be given to DNR in schools. He cited the National Education Association's DNR policy of June 1994 noting:

"The proposed policy does not take a position on whether school districts should, as a matter of public policy, honor DNR orders. That is an issue that should be resolved at the state level or local level. However, in considering the request to honor a DNR order, the school District should consult with counsel to determine what legal rights and responsibilities it has, including the applicability of a collective bargaining agreement."

In other words, DNR orders must be handled on a case by case basis. The NEA recommended that a plan be in place, that parents put the request in writing and that a physician should sign it (the plan). The plan should specify actions that teachers or other employees should take and the plan should be reviewed annually. All school employees who may have to supervise the student during the school day should be fully briefed on procedures. An additional recommendation was that the student should wear an identification bracelet noting the DNR order. Finally, the NEA suggested that training and counseling and educational programs on the topics of death and dying should be provided for students and staff alike.

Law in Louisiana (La. R.S. 40: 1299.58.2 [2000]) requires the wearing of an identification bracelet indicating the presence of a DNR order. Certified first responders in an emergency are not liable for withholding life-sustaining procedures in the presence of such a bracelet and will not be liable for providing life-sustaining interventions if no bracelet is worn even if such an order exists. The Attorney General of Louisiana, issued an opinion on April 17, 2000 (Opinion No. 00-73) responding to a request for a policy regarding DNR. The Louisiana Board of Elementary and Secondary Education and each LEA made the request. The purpose of the request was to obtain clarity whether school personnel should honor or refuse to honor a DNR order. The Attorney General referenced two cases. The first was *Lewiston, Maine Public Schools* (2ECLRR 121, OCR, 1994). In that case, OCR ruled that a "policy which did not distinguish between students with and without disabilities (in regard to treatment) but did allow for the development of individually designed medical resuscitation plans by multi-disciplinary school based teams" did not conflict with Section 504 or with ADA (p. 3). The second case was the *ABC case.* The Louisiana Attorney General cited the Maryland Attorney General's opinion and concluded that state law and policy regarding DNR did not apply to children who are not terminally ill. The Attorney General stated "Louisiana law does not address the responsibility of this type of declaration being complied with by school personnel." He further noted that the risk to a child from treatment must out weigh the benefits for any consideration to be given to DNR in schools. He cited the National Education Association's DNR policy of June 1994 noting:

"The proposed policy does not take a position on whether school districts should, as a matter of public policy, honor DNR orders. That is an issue that should be resolved at the state level or local level. However, in considering the request to honor a DNR order, the school District should consult with counsel to determine what legal rights and responsibilities it has, including the applicability of a collective bargaining agreement."

In other words, DNR orders must be handled on a case by case basis. The NEA recommended that a plan be in place, that parents put the request in writing and that a physician should sign it (the plan). The plan should specify actions that teachers or other employees should take and the plan should be reviewed annually. All school employees who may have to supervise the student during the school day should be fully briefed on procedures. An additional recommendation was that the student should wear an identification bracelet noting the DNR order. Finally, the NEA suggested that training and counseling and educational programs on the topics of death and dying should be provided for students and staff alike.

While Louisiana does not have precedent in case law on the specific topic of DNR orders, the ruling in the case In *Re: D.V.W.* (424 So. 2d 1015 [La. 9182]) did recognize that a child has an independent right to discontinue artificially sustained life (with certain conditions). No change in the law was made by virtue of the Attorney General's opinion. Louisiana Code notes that a "competent" person posses the right to refuse medical treatment. (Loyola Law Review, Spring, 1999, Frederick Parker, " The withholding or withdrawal of life sustaining medical treatment under Louisiana Law").

Only Arkansas has a law that addresses the role of teachers and other school personnel, such as nurses, in the implementation of DNR orders with some of the great clarity. In Arkansas (Ark Stat. Ann. §201-13-901 [1999]), no one but a licensed physician may honor a DNR order. Neither teacher, nurse nor emergency service personnel may do this.

Many states leave the issue of DNR orders unclear or do not address it as it relates to schools. Among these are New York, Alabama, New Mexico, Nevada, Illinois, Michigan, Texas, Utah, Colorado, Missouri, Montana, New Hampshire, Oregon, Pennsylvania, Vermont, Mississippi, Minnesota, Kansas, and Iowa.

The question of DNR orders and schools is complex and fraught with legal issues. One of the most difficult areas in which to obtain clarity relative to DNR orders and schools is that of mature minors. In an article in the DePaul Law Review (45 DePaul L. Rev. 1165, Summer 1996), Jessica Penkower notes that "a court's consideration of whether to legally sanction an adolescent's refusal of life-saving medical treatment necessarily involves balancing significant ethical interests." The interest of the adolescent is balanced against the society's interest in preserving life. But what about the interests of the school, its teachers, the parents and other students? The impact on school personnel, other students and the student for whom there is a DNR order is significant.

One question that clearly arises from all of the discussion and consideration of both cases and statute is whether or not there is a "balance test" in terms of the right to die and the interest of persons who are dependents. ("The tort of Interference with the Right to Die: The wrongful living cause of action", Samuel Oddi, Georgetown Law Journal, December, 1986) Clearly, we must not, in the words of Beekman, respond from any level other than legal to the existence of a DNR order. (Jun 10, 1995). "Failing to take a position on DNR orders or failing to inform the staff about the position... failing to have a district policy puts the individual employee in the position of making a decision that he or she may not be empowered to make. The district is then left open to litigation under "IDEA, Section 504, or the courts." We cannot, as Beekman notes, succumb to emotions, religion and morality in lieu of legal and practical issues of compliance or non-compliance.

Schools, school boards and educators would do well to consider these issues and the applicable law. They would be wise to develop policy and procedures to address the issue of DNR orders should an emergency arise in which DNR is of concern. Sooner or later an emergency will arise in which DNR is implicated. Will we be ready to respond legally, ethically and appropriately? What is done in preparation will determine our response and our liability.

U.S. Department of Education
Office of Educational Research and Improvement (OERI)
National Library of Education (NLE)
Educational Resources Information Center (ERIC)

ERIC®

REPRODUCTION RELEASE

(Specific Document)

I. DOCUMENT IDENTIFICATION:

Title: DNR ORDERS AND School RESPONSIBILITY

Author(s): SEWALL, A. M. + BALKMAN, S.K.

Corporate Source:

Publication Date:

II. REPRODUCTION RELEASE:

In order to disseminate as widely as possible timely and significant materials of interest to the educational community, documents announced in the monthly abstract journal of the ERIC system, *Resources in Education* (RIE), are usually made available to users in microfiche, reproduced paper copy, and electronic media, and sold through the ERIC Document Reproduction Service (EDRS). Credit is given to the source of each document, and, if reproduction release is granted, one of the following notices is affixed to the document.

If permission is granted to reproduce and disseminate the identified document, please CHECK ONE of the following three options and sign at the bottom of the page.

The sample sticker shown below will be affixed to all Level 1 documents	The sample sticker shown below will be affixed to all Level 2A documents	The sample sticker shown below will be affixed to all Level 2B documents
PERMISSION TO REPRODUCE AND DISSEMINATE THIS MATERIAL HAS BEEN GRANTED BY Sample TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC) 1	PERMISSION TO REPRODUCE AND DISSEMINATE THIS MATERIAL IN MICROFICHE, AND IN ELECTRONIC MEDIA FOR ERIC COLLECTION SUBSCRIBERS ONLY, HAS BEEN GRANTED BY Sample TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC) 2A	PERMISSION TO REPRODUCE AND DISSEMINATE THIS MATERIAL IN MICROFICHE ONLY HAS BEEN GRANTED BY Sample TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC) 2B
Level 1	Level 2A	Level 2B
☒	☐	☑
Check here for Level 1 release, permitting reproduction and dissemination in microfiche or other ERIC archival media (e.g., electronic) *and* paper copy.	Check here for Level 2A release, permitting reproduction and dissemination in microfiche and in electronic media for ERIC archival collection subscribers only	Check here for Level 2B release, permitting reproduction and dissemination in microfiche only

Documents will be processed as indicated provided reproduction quality permits.
If permission to reproduce is granted, but no box is checked, documents will be processed at Level 1.

I hereby grant to the Educational Resources Information Center (ERIC) nonexclusive permission to reproduce and disseminate this document as indicated above. Reproduction from the ERIC microfiche or electronic media by persons other than ERIC employees and its system contractors requires permission from the copyright holder. Exception is made for non-profit reproduction by libraries and other service agencies to satisfy information needs of educators in response to discrete inquiries.

Sign here,→ please

Signature: [signatures]	Printed Name/Position/Title: ANGELA M. SEWALL; Kathy Balkman	
Organization/Address: UALR Coll. of ED, Little Rock, ARK. 72207	Telephone: (501) 569-3113	FAX: (501) 569-8694
	E-Mail Address: AMSEWALL@UALR.EDU (AM SEWALL)	Date: 7/11/01

(over)

III. DOCUMENT AVAILABILITY INFORMATION (FROM NON-ERIC SOURCE):

If permission to reproduce is not granted to ERIC, *or*, if you wish ERIC to cite the availability of the document from another source, please provide the following information regarding the availability of the document. (ERIC will not announce a document unless it is publicly available, and a dependable source can be specified. Contributors should also be aware that ERIC selection criteria are significantly more stringent for documents that cannot be made available through EDRS.)

Publisher/Distributor: PRO-ED
Address:
Price:

IV. REFERRAL OF ERIC TO COPYRIGHT/REPRODUCTION RIGHTS HOLDER:

If the right to grant this reproduction release is held by someone other than the addressee, please provide the appropriate name and address:

Name: I have talked to Pro-ed. Portions of this presentation will appear in an article in Remedial and Special Education. I do have an OK from them to release this to ERIC with that CAVEAT.
Address:

V. WHERE TO SEND THIS FORM:

Acquisitions Coordinator
ERIC Clearinghouse on Disabilities and Gifted Education
1110 North Glebe Road
Suite 300
Arlington VA 22201-5704

However, if solicited by the ERIC Facility, or if making an unsolicited contribution to ERIC, return this form (and the document being contributed) to:

ERIC Processing and Reference Facility
1100 West Street, 2nd Floor
Laurel, Maryland 20707-3598

Telephone: 301-497-4080
Toll Free: 800-799-3742
FAX: 301-953-0263
e-mail: ericfac@inet.ed.gov
WWW: http://ericfac.piccard.csc.com

EFF-088 (Rev. 9/97)